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Brf. of Birney & Hemphill
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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, APPELLANT,

vs.

J. FOREST MANNING AND OTHERS, APPELLEES.

MOTION.

ARTHUR A. BIRNEY,
JOHN J. HEMPHILL,
Counsel for Appellees.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, APPELLANT,

vs.

J. FOREST MANNING AND OTHERS, APPELLEES.

Come now the appellees, J. Forest Manning and others, and move this honorable court to advance this cause for argument to an early day during the present term of the court for the reasons set forth below.

ARTHUR A. BIRNEY,
JOHN J. HEMPHILL,
Counsel for Appellees.

Statement of Matter Involved, with Reasons for Application.

This is an appeal from a decree of the Appeal Court of the District of Columbia in a case begun by the appellees in July, 1898, in the Supreme Court of said District, to compel the Chesapeake and Potomac Telephone Company to continue to furnish them the use and service of a telephone upon payment of the annual charge prescribed in the act of Congress of June 30, 1898 (30 Stat., p. 537–8).

The defendant's answer averred that the telephone service could not be maintained at the rate fixed by the act of Congress and denied the power of Congress to compel it to

furnish the same for less than cost, averring that the act was unconstitutional and void.

A temporary injunction was granted but on the hearing of the case on proofs and argument, a perpetual injunction was refused and the case ordered dismissed.

On appeal this decision was reversed and the cause remanded for the entry of a decree granting the injunction.

Reasons for the motion:

1. The appeal involves the constitutionality of an act of Congress, approved June 30, 1898, fixing rates to be charged by telephone companies for telephone service in the District of Columbia.

2. The Supreme Court of the District having declared the act null and void, and the Court of Appeals having overruled this decision, the community is harrassed with doubts arising from two opposing decisions on a question of the greatest importance to its business interests.

3. The Chesapeake and Potomac Telephone Company refused to be bound by the act of Congress, and has collected and continues to charge and collect from users of its instruments fully twice the rate allowed by said act, amounting each year to more than $100,000 in excess of the legal charges, and aggregating at this time fully $350,000; all or a greater part of which may be wholly lost to those compelled to pay it.

4. More than fifty similar suits have been filed and are pending on the calendars of the equity court of said District awaiting the final decision in this case.

5. The action of the Chesapeake and Potomac Telephone Company in failing and refusing to conform to the provisions of the act of Congress and in refusing the use of its instruments, except in violation of law, creates confusion and friction in the business of the whole community, which has been endured for three and a half years.

6. The important question as to the power of Congress to

deal with and control public service corporations in the capital of the country is directly involved in the appeal, and it is of the greatest interest to the community to have an early determination of this important question.

7. If the case is to await its regular call on the calendar of this court, the approaching session of Congress, and possibly a second session, will have adjourned while the power of Congress to legislate on the important questions involved will be still in doubt under the decisions in this case.

8. The important principle of the law involved; the large amount of money being exacted of the users of telephones, in excess of the statutory rate; the necessity for the daily use of the telephone in modern business methods and the injury to the public generally on account of the uncertainty as to the powers of Congress in the District of Columbia and over its public-service corporations make this a case of wide-spread interest, reaching far beyond the parties to the suit and involving the rights of the entire community.

ARTHUR A. BIRNEY,
JOHN J. HEMPHILL,
Counsel for Appellees.

Please take notice that the foregoing motion will be submitted to the court on Monday, December 2, 1901, at noon, or as soon thereafter as counsel can he heard.

A. A. BIRNEY,
JOHN J. HEMPHILL,
Counsel for Appellees.

To A. S. WORTHINGTON, ESQ.,
Counsel for Appellants.

Service of a copy of the above notice and motion acknowledged, and copy retained November 22, 1901.

WORTHINGTON, HEALD & FRAILEY,
Per W. K. QUINTER.